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Abstract

This paper explores the unique structure of land ownership in premodern China (Song to Qing dynasties, 960–1911 CE), highlighting how it diverged from Western notions of absolute property. Rather than prioritizing complete alienability, Chinese land tenure featured multi-layered and overlapping rights that emphasized kinship, communal belonging, and moral constraints. Institutional features like the separation of subsoil and surface rights, redeemable sales (*dian*), and perpetual tenancy (*yong dian*) balanced market functionality with social stability. These arrangements reflect a moral economy deeply influenced by Confucian values and an enduring communal logic. The study argues that what Western property law scholars once viewed as inefficient or ambiguous was in fact a culturally coherent land tenure system that embedded land within familial and ethical structures.

Keywords: Land Tenure, Premodern China, Communal Ownership, Confucian Moral Economy, Shared Property Rights

1. Introduction

The study of the land ownership system in premodern China (Song to Qing dynasties, c. 960–1911 CE) demands a fundamental consideration of property rights frameworks. Where Western legal traditions emphasized absolute ownership (dominium) and temporary use rights (usufruct), Chinese land tenure during this period cultivated partial alienation of rights (temporally and spatially), multi-layered stakeholder claims, and moral-economic constraints. This system – far from being the “ambiguous” or “backward” regime criticized by Western scholars – represented a deliberate adaptation to agrarian realities, balancing state fiscal needs, elite wealth strategies, and shared rights that embedded land within communal and intergenerational relationships.

This paper examines how land ownership in premodern China developed as a system of shared and overlapping claims, expressing fundamental notions of identity and collective belonging. Unlike models of absolute ownership, Chinese land tenure created layered rights while maintaining deep connections to kinship structures and the moral economy of subsistence communities. At its core, this system reflected a spiritual tradition of communal stewardship, with land serving as ancestral trust (*zu chan* 祖产) rather than mere commodity.

Three distinctive features defined this system. First, the separation of subsoil rights (*tian di quan* 田底权) from surface rights (*tian mian quan* 田面权) in *yi tian er zhu* (one field, two owners 一田二主) institutionalized shared ownership, allowing land to function simultaneously as ancestral trust, economic asset, and subsistence guarantee. Second, transaction forms like redeemable sales (*dian* 典) and perpetual tenancy (*yong dian* 永佃¹) enabled market participation while preserving communal continuity—contrasting with Europe’s trajectory toward absolute alienability. Third, Confucian moral economy ideals, expressed through legal judgments and customary practices, privileged stability over commercial efficiency, protecting vulnerable cultivators through mechanisms like redemption rights and rent caps.

The Ming–Qing period saw these principles institutionalized in practices like ‘one field, two owners’ (*yi tian er zhu* 一田二主), where subsoil and surface rights circulated independently yet remained tied to shared identities and obligations. These arrangements reflected not

¹ There are two Chinese concepts in this article, *yong dian* and *yong dian quan*. ‘Quan’ in Chinese means ‘right’. ‘Yong dian’ means a long-standing factual tenure; ‘Yong dian quan’ means that tenure crystallized into a legally protected property right.

legal confusion but a cultural logic that prioritized at its foundation collective welfare across generations. Even amid commercialization, transaction forms like redeemable sales (*dian* 典) and collateralized transfers (*dang* 当) ensured that complete alienation remained the exception, preserving communal and family-based claims.

Drawing on land contracts, court cases, and lineage records, this study reveals how Chinese land tenure mediated between two imperatives: the economic need for flexible rights transfers and the moral imperative to maintain land as a shared resource. The resulting system shows how partial, overlapping claims sustained both market activity and social stability.

Ultimately, premodern Chinese land ownership represents a distinctive approach to property that measured value not just in economic profits but in maintained connections to community, lineage, and place. This history offers urgent insights for contemporary debates, as China navigates tensions between market reforms and the enduring logic of communal traditions. What emerges is not merely an alternative property regime but a challenge to foundational assumptions in property theory. Where one American property law scholar² saw inefficiency in China's land tenure system, we find a system that embedded economic relations within a shared social and ethical framework—a reminder that property systems can reflect moral and social priorities as much as economic calculations.

2. Spiritual Tradition of Communal Land Ownership and its Social Structural Basis

From a historical perspective, the earliest recorded land system in China was the well-field system³ under the Western Zhou Dynasty³ (西周 *xi zhou*, c. 1046–771 BCE). The Western Zhou Dynasty is considered the beginning of China's patrilineal clan-based social system (*zong fa zhi*, 宗法制), which formed the basic character of Chinese feudalism.

The well-field system is a state-owned patriarchal feudal system known as 'All lands under heaven belong to the king' (普天之下，莫非王土)⁴: The Zhou king, as the supreme ruler, theoretically owned all land, but his direct control was limited to the royal domain (the

² Ellickson (1995).

³ The Zhou Dynasty (1046–256 BCE) split into two eras: Western Zhou (1046–771 BCE) and Eastern Zhou (770–256 BCE). The dynasty ended when the Qin state deposed the last Zhou ruler. The division of the Zhou Dynasty is based on the Geographic Shift of administrative capital. Western Zhou: Ruled from Haojing (near modern Xi'an, in western China). Eastern Zhou: After nomadic invasions destroyed Haojing in 771 BCE, the capital moved east to Luoyang (in Henan Province). The terms "Western" and "Eastern" simply reflect the capital's location. The move marked the Zhou Dynasty's decline from unified rule to nominal sovereignty.

⁴ 'All lands under heaven belong to the king' originates from the 《诗经·小雅·北山》, a poem in the *Classics of Poetry* (《诗经》), one of China's oldest literary texts compiled during the Zhou Dynasty.

capital and surrounding areas). Other lands were granted to feudal lords and nobles. The king enfeoffed land to feudal lords who then distributed it to ministers and lower-ranking nobles. Peasants did not own land; they held usage rights within this clan-based and aristocratically controlled system. Their labor on the land both sustained their subsistence and supported their lords' political and ritual authority. The land-peasant relationship was not economic in a modern sense but deeply embedded in feudal hierarchy and ritual obligations. For peasants, land provided livelihood but also bound them to a system of reciprocal obligations: they worked, and in return the lords provided protection, order, and participation in rituals.

The Western Zhou land system was thus a hierarchical state-controlled system with dual features of state ownership and aristocratic collective control. The nobles had usage and profit rights but not full ownership. Land could not be freely bought or sold. It was a means of production controlled by the state, not a commodity. On the one hand, land represented power and status. A noble's rank determined his land allotment. For later aristocratic generations, land was inherited. Land was directly tied to ancestral worship; losing it meant dishonoring one's lineage. Therefore, the land has held deep ancestral and ritual significance ever since the start of the Chinese feudal period.

Later, in the Qin dynasty, statesman Shang Yang's 'change of law' reform, which "eliminated the well-field system and allowed the people to sell and buy land,"⁵ legitimized land market transactions for the first time in China's history. However, the abolition of the well-field system and the purchase and sale of land brought about the serious social problem of land annexation in the early Han Dynasty. The Han Confucian school⁶, which was already the dominant ideology of the Han state at that time, strongly attacked the annexation of land by the powerful, believing that the appropriation of land by the powerful made life unbearable for the common peasants and ruined the moral basis of society. The school drew from Mencius, who said: "The foundation of benevolent governance must begin with defining the boundaries of fields. If the boundaries are not drawn correctly, the division of land (under the well-field system) will be unequal, and the

⁵ The phrase "除井田，民得买卖" (abolishing the well-field system and allowing the people to buy and sell land) originates from the reforms implemented by Shang Yang during the Warring States Period in the State of Qin. This policy was mentioned by Dong Zhongshu in the Han Dynasty, who criticized the consequences of such reforms, stating that they led to a situation where the rich owned vast tracts of land while the poor had no place to stand.

⁶ During the reign of Emperor Wu of the Han Dynasty, Confucian scholars such as Dong Zhongshu advocated for land reforms based on Confucian principles. They proposed the restoration of the well-field system to ensure equitable land distribution, arguing that this would prevent social unrest, promote benevolent governance, and fulfill the moral duty of the emperor as the Son of Heaven. These reforms aimed to integrate Confucian ideals with state governance, emphasizing social harmony and ethical behavior. Emperor Wu implemented some of these ideas, including state monopolies on essential commodities and agricultural development initiatives. These Confucian arguments for land reform had a lasting impact on Chinese governance, influencing future policies aimed at social equity and welfare.

distribution of grain as income will be unfair. This is why tyrannical rulers and corrupt officials invariably neglect to regulate these boundaries."⁷

Confucian scholars proposed a land system similar to the well-field system, which restored communal ownership of land, and reflected the rightful side of social land distribution. As Mencius said,

The way of the people is this: If they have a certain livelihood, they will have a fixed heart; if they do not have a certain livelihood, they will not have a fixed heart. If they do not have a fixed heart, there is nothing they will not do in the way of self-abandonment, of moral deflection, of depravity, and of wild license. When they have thus been involved in crime, to follow them up and punish them—this is to entrap the people. How can such a thing as entrapping the people be done under the rule of a benevolent man?"⁸

[...] [T]his condition, in which the people nourish their living and bury their dead without any feeling against any, is the first step of royal government. Let mulberry trees be planted about the homesteads with their five mu, and people of fifty years may be clothed with silk. In keeping fowls, pigs, dogs, and swine, do not let their times of breeding be neglected, and people of seventy years may eat flesh. Let there not be taken away the time that is proper for the cultivation of the farm with its hundred mu, and the family of several mouths that is supported by it shall not suffer from hunger.⁹

The Confucian discourse on land rights reflects a moral ideal of land and social justice that resonated with the scholar class. This discourse also aligned with the imperial class's need to maintain symbolically unalienable land ownership, thereby serving both ethical and political interests. This led the ruling classes after the Qin dynasty to pursue the suppression of land annexation in the historical development of private land ownership. As a result, the reforms of the land system that developed up to the Tang Dynasty—such as Dong Zhongshu's theory of restricting the ownership of land (限田论) in the Western Han Dynasty, the King's Field System (王田制) of the Wang Mang Dynasty (9–23 CE), the Occupation of Field System (占田制) of the Jin Dynasty (3rd–5th century CE), and the Equalization of Field System (均田制) of the Northern Wei Dynasty to Tang Dynasty (5th–9th century CE)—all basically involved the separation of land ownership rights, or of ownership rights and rights to use land, under the premise that the land should be communally / publicly owned. For example, at the end of the Eastern Han Dynasty (2nd–3rd century CE), Confucian scholar Xun Yue substantially developed Dong Zhongshu's

⁷ *Mencius* (《孟子》), Book III: Teng Wen Gong (Part A) (滕文公上).

⁸ Legge (1895), Book III: Teng Wen Gong I, Part 3, *The Works of Mencius*. "民之为道也，有恒产者有恒心，无恒产者无恒心。苟无恒心，放辟邪侈，无不为已。及陷乎罪，然后从而刑之，是罔民也。焉有仁人在位，罔民而可为也?"

⁹ Legge (1895), The Chapter on King Hui of Liang, Part 1. *The Works of Mencius*. "五亩之宅，树之以桑，五十者可以衣帛矣。鸡豚狗彘之畜，无失其时，七十者可以食肉矣。百亩之田，勿夺其时，八口之家可以无饥矣".

theory of land ownership restrictions (限田思想), offering a critical analysis of the land concentration phenomena during the late Eastern Han period. In his conceptual framework, excessive land privatization constituted a fundamental subversion of the feudal hierarchy system (termed as 'self-enclosure' 自封), representing an unauthorized appropriation of aristocratic land prerogatives by commoners. His theoretical contribution primarily advocated for the restoration of state sovereignty over land redistribution, positioning centralized land allocation as a necessary mechanism for maintaining both economic equilibrium and social stratification. Xun put forward the idea of 'cultivating but not owning' (耕而勿有), that is to say, the rights to occupy, to use, and to own the land must be separated.¹⁰

It can be understood that, from the very beginning of the creation of the state as a polity in ancient China, symbolical and practical ownership of land in China was understood to be shared between the State (equals the King) and other owners.¹¹ Different modes of ownership on the same land were in a situation of juxtaposition. Multi-layered stakeholder claims on the same land co-existed. In practice, sociologists' work proved this system kept resilient in the late imperial period. Fei Xiaotong argued in his study of Chinese rural society that land rights formed a triangular relationship—between imperial authority (symbolic ownership), gentry (local management), and peasants (usufruct rights tied to kinship / community).¹² Huang stated that Ming–Qing land practices featured a compromise between state taxation demands and local customs, with split land rights like 'surface rights' and 'subsoil rights'.¹³ Different owners shared the power to possess, use, profit from, and dispose of the same land and its products as well as values temporally and spatially: namely, different modes of ownership. These are the two main characteristics of traditional land ownership in China: the long-standing conflict and tension between the spiritual / symbolic tradition of communal land ownership and the development of land's privatization as a commodity, and the multi-objective nature of land ownership rights.

The ideal of collective possession of land is supposedly derived from the earliest clan traditions in Chinese agricultural reality. When the people of a clan society worked together on the land and distributed it equally, the land was a communal means of

¹⁰ Xun Yue (2018), specifically in the chapter "On Contemporary Affairs" (《时事篇》).

¹¹ Weber, M. (1922), "Introduction.,"; Duara, P. (1988), "Introduction."

Weber's concept of 'patrimonial bureaucracy,' describes imperial China's land system as theoretically centralized under the emperor but practically managed by local elites, highlighting the gap between symbolic ownership and decentralized control. Duara examines 'state involution:' how the Qing state's weakening control allowed local elites to reinterpret land rights, creating a hybrid system.

¹² Fei (1948).

¹³ Huang (1990).

production (not a commodity), which was also the origin of the well-field system of the Western Zhou Dynasty mentioned above. When the state came into being, it inherited the idea of collective ownership of land and transformed it into a system of national (akin to the king) and communal ownership of land.

This symbolic and communal land ownership understanding is closely related to the longstanding Chinese social structure of family. The agrarian nature of traditional Chinese society fundamentally shaped the multigenerational family structure that endured for centuries. This extended family system, typically encompassing three to five generations under one roof, was deeply rooted in the practical demands and cultural values of agricultural civilization. Agricultural production required pooled labor resources, making large families advantageous. This cooperative model maximized agricultural efficiency and ensured economic stability.

Unlike divisible movable assets, land worked most effectively when kept intact, discouraging division of land and other property among heirs. This created strong incentives to preserve the extended household as a single economic unit. The inheritance of farmland necessitated maintaining family unity. Confucian values of filial piety also idealized multigenerational cohabitation. The elderly's agricultural knowledge gained reverence, transforming them into living libraries of farming techniques, weather patterns, and folk wisdom. Their presence became both economically valuable and morally sacrosanct. Meanwhile, ancestral worship traditions required maintaining family altars and gravesites, with the eldest male typically serving as ritual leader. The physical household became a sacred space connecting past, present, and future generations. 'Family' can be either a nuclear or joint family in the general sense, or it can extend to a lineage or clan.¹⁴

Zelin's research argues that the basic unit of land property rights in China is the family.¹⁵ Property rights were fundamentally organized around the family unit rather than the individual. With the notable exception of women's dowries, which constituted one of the few forms of gendered personal property, ownership was conceptualized as a collective family domain. This framework was not static but scalable, extending outward in concentric layers of kinship and obligation. Such a pattern corresponds to Fei Xiaotong's theorization of the "differential mode of association," in which relational hierarchies rather than individual rights structured the distribution and management of resources (cf. Fei

¹⁴ Zelin et al., (2004), 21, 33.

¹⁵ Ibid., 4, 5.

Xiaotong, “Patterns of Differential Order / *cha xu ge ju*”¹⁶). Over the course of several millennia, the predominance of agriculture as the principal mode of production in China established land as the primary form of property. Beyond its material value, land also acquired enduring symbolic significance, since it was directly tied to subsistence, lineage continuity, and social stability. As a result, land came to be regarded as inviolable.

In the absence of the division of familial assets, communal ownership characterized family property, affording all members entitlement to income derived from such assets within various parameters. In instances of partition or succession, male counterparts within the same generational cohort possessed equal entitlement to the shared assets. However, exclusive authority over the administration and disposition of familial property rested with the patriarch or lineage elder, notably the direct ascendant male figure. This paradigm is exemplified in Qing legal delineations of ownership rights, which substantiated the primacy of familial over individual rights. Such a conceptual framework endured across judicial pronouncements and mediation practices, consistently emphasizing the familial unit as the locus of entitlement and governance.¹⁷

The traditional Chinese grassroots governance system was fundamentally structured as a gentry-led paradigm centered on familial units, exhibiting three constitutive dimensions that collectively sustained social order. At its organizational core, (1) lineage networks functioned as primary governance units, institutionalized through ancestral halls, meticulously maintained genealogical records, and codified clan regulations, forming an isomorphic family-state structure where micro-level domestic hierarchies mirrored macro-level imperial governance. The power architecture was dominated by (2) the scholar-gentry class who derived dual legitimacy through cultural capital from imperial examination success and economic dominance via landownership, exercising quasi-state authority through village covenants that blended Confucian moral governance with practical administration. Operationally, this system employed a distinctive synthesis of ritual norms and legal sanctions, combining moral indoctrination with graduated disciplinary measures while allocating resources through what Fei Xiaotong conceptualized as the differential mode of association / *cha xu ge ju*—a fluid yet hierarchical relational structure. This remarkably adaptive model, characterized by Fei as a form of gerontocratic rule, effectively compensated for the (3) imperial state’s limited infrastructural penetration by outsourcing governance to localized kinship networks, where minimal bureaucratic apparatus achieved maximal social stability through

¹⁶ Fei (1992), 60–70.

¹⁷ Ibid., 4–5, 20–21.

culturally embedded mechanisms of moral authority and self-regulating familial institutions.

Therefore, when we look at land ownership in China, it is not difficult to find that communal land (*gong di* 公地) was an extremely important part of the structure of land ownership in China before 1949. Communal land refers to clan / lineage fields, temple fields, school fields, and *Yi zhuang* (charitable estates / charitable kinship institutions)¹⁸, all of which belong to the category of legal persons property. Lineages often owned communal property, such as sacrificial fields (祭田) and *Yi zhuang*, while villages also had their own communal property, such as public woodcutting and grazing land, charitable land, and village temples property.

Illustratively, within the domain of lineage property, sacrificial fields and *Yi zhuang* emerge as quintessential examples. Though primarily conceived to venerate ancestral figures, these holdings concurrently fulfilled broader communal objectives, encompassing the provision of sustenance for the lineage collective and the cultivation of talents among successive generations. Notably, sacrificial fields transcend mere vehicles for individual lineage members' gains; instead, they embody a collective endeavor, thereby underscoring the communal ethos inherent within lineage structures.¹⁹ The governance structure of the sacrificial field typically designates an administrator, yet pivotal decisions are subject to the collective deliberation of the lineage's general assembly.

Contrastingly, the inception of *Yi zhuang* traces back to the establishment of the Fan Family's *Yi zhuang* by the esteemed Minister Fan Zhongyan during the Northern Song Dynasty. Functionally, the primary objective of *Yi zhuang* revolves around utilizing the proceeds generated from its communal land to alleviate the plight of the destitute and widowed within the lineage, alongside perpetuating ancestral rites and fostering talent. Legally sanctioned, a *Yi zhuang* possesses property in the lineage's own right, facilitated by a designated manager acting as its representative. Predominantly tasked with overseeing the renting and leasing of the *Yi zhuang's* communal land, collecting rental yields, and equitable distribution thereof, the managerial purview underscores its public-facing orientation. While lineage members stand to benefit from *Yi zhuang*, such entitlement is contingent upon adherence to the *Yi zhuang's* regulations, thereby precluding exclusive claims to rights solely premised on their lineage status unless they

¹⁸ *Yi zhuang* were innovative Song Dynasty institutions that combined welfare functions with lineage consolidation through managed land endowments. *Yi Zhuang* as charitable trusts established perpetual land endowments for ancestral worship and poor relief. See Clark and Smith (2015), 526.

¹⁹ Hansheng Chen (1984), 27–29, 34–38.

have contributed jointly to the *Yi zhuang's* establishment.²⁰

In juxtaposition with sacrificial lands, which were primarily consecrated for ritual purposes and tightly bound to ancestral worship, *Yi zhuang* assumes a comparatively autonomous and communal stance vis-à-vis the lineage. Whereas sacrificial lands reinforced the symbolic authority of the ancestors, *Yi zhuang* operated as an institutional mechanism designed to consolidate lineage solidarity through practical welfare functions. Its communal character manifested in several ways: it provided economic relief to impoverished lineage members, subsidized education and marriage expenses, and acted as a reserve fund in times of famine or crisis. Through such redistributive practices, *Yi zhuang* transformed lineage property into a shared resource, thereby reducing internal stratification and mitigating conflict. At the same time, its emphasis on collective benefit institutionalized moral obligations within the lineage, reinforcing the idea that prosperity was inseparable from communal responsibility. In this respect, *Yi zhuang* exemplified how material resources were mobilized not only for the survival of individuals but also for the reproduction of lineage cohesion and long-term communal stability.

During the early and mid-20th century, distinctive regional patterns characterized the distribution of communal land in China. The relative absence of strong kinship-based authority in some regions meant that local communities were less dominated by ancestral halls, clan networks, or lineage estates. Instead, land tenure was more directly shaped by state institutions, market mechanisms, and individual household strategies. Consequently, the ratio of communal land (公田) to private land (私田) varied significantly across regions, depending on the strength of lineage power. In contrast to the southeastern provinces, where lineage institutions were deeply entrenched, the northern regions of China exhibited only a minimal presence of lineage power. Surveys from Hebei and Shaanxi in the early twentieth century indicate that communal lands and ancestral halls—two key markers of lineage strength—were either exceedingly scarce or altogether absent. For example, Li Jinghan's 1930s investigation of Ding County in Hebei recorded over 238,000 mu of cultivated land, yet only 13 ancestral halls with a mere 147 mu under their control, or just a few ten-thousandths of the total cultivated area.²¹ Predominantly, land ownership in this area was characterized by privatization, reflecting a prevailing trend towards individualized property rights. In contrast, within the Yangtze River basin, encompassing provinces such as Hunan and Hubei, communal property holdings represented a more substantial proportion, accounting for approximately 15% of all

²⁰ Ibid., 284–287, 304, 195–98.

²¹ Li (1985), 172, 618.

cultivated land. Particularly in provinces exhibiting robust traditional clan and lineage structures, such as Guangdong, Zhejiang, and Jiangsu, communal land holdings were significantly more prevalent, encompassing 30–80% of all cultivated land.²² In the early twentieth century, clan estates in each county of Guangzhou Prefecture accounted for as much as 50–80% of all landed property, while non-lineage communal lands (such as those belonging to schools, temples, and guilds) accounted for only 1–5%. In Zhejiang, lineage estates were likewise extensive; for example, in Pujiang County one-third of the land belonged to ancestral halls, and in Yiwu County some lineages owned as much as 80% of the cultivated land.²³ The ownership rights of these collectively owned communal lands are complex, where the rights to manage and dispose of the land, to use it, and to benefit from it are shared between the group as a whole and individuals. The societal construct of ‘家天下’ (*jia tian xia*, literally translating to ‘All-under-Heaven ruled as a family patrimony’)²⁴ engenders a moral ethos centered around communal ownership. Within this framework, the king assumes the role of the paramount patriarch, serving as both a metaphorical father figure and elder brother to the populace. In ancient Chinese society, unlike the Middle Ages in Western Europe, there existed no explicit agreement between the king and individuals across various strata such as nobles, merchants, and citizens. Instead, all interpersonal relationships were predicated upon different manifestations of ‘parentage,’ the latter serving as the sole legal representatives. These layers of parentage collectively form a vertical hierarchy of subordination, culminating at the apex with the ultimate parent embodying ‘national ownership rights.’

Indeed, the symbolic representation of the state as an extended family unit underscores the philosophical underpinnings of communal ownership as a natural outgrowth. As a manifestation of communal possession, public ownership embodies ethical ideals by exemplifying fundamental equality within the purview of centralized management, typically under the auspices of a singular patriarchal authority. Consequently, this conceptualization posits communal ownership as inherently conducive to fostering stability in land ownership rights arrangements, thereby serving as a linchpin for promoting social cohesion and stability within communities. This also allows us to once again understand that in the ongoing market economy reform in China, public ownership rights continue to exert a unique power and influence distinct from other emerging world

²² Feng (1935), 66–67, 57–58.

²³ Liu (1998), 2–6.

²⁴ ‘家天下’ (*jia tian xia*): Ancient Chinese politics constituted a form of ‘familialized governance of All-under-Heaven,’ see Qian Mu (1940). Fei Xiaotong (1992): “The essence of ‘familialized tianxia’ lies in its simulated patriarchal power structure”; Schwartz (1985), discussed the Confucian conception of extending familial principles to All-under-Heaven in *The World of Thought in Ancient China*, 60–100.

markets.

3. The Fragmentation of Land Ownership: Multi-Layer and Multi-Owner

If we extend our analysis across different historical dynasties, a recurring pattern emerges. At the onset of a dynasty, land ownership tends to be decentralized, but as the dynasty progresses, centralization and annexation become inevitable. This process challenges and ultimately undermines the traditional system of small-scale farming, which forms the bedrock of social stability in rural areas. When peasants are deprived of their land rights beyond a certain threshold, peasant uprisings ensue. While the initial aim of many peasant uprisings appears to be the restoration of a primitive communal farming system, historical evidence shows that upon the failure of these uprisings and the ascension of a new dynasty, the predominant response is the suppression of large estate and landlord systems, coupled with support for and restoration of small-scale peasant cultivation.²⁵ This recurring phenomenon underscores the idealization of communal land ownership in feudal China. Despite being considered anachronistic in numerous historical periods, the advocacy for its reinstatement persisted across generations.

By the time of the late Tang Dynasty (9th century) and into the early Northern Song Dynasty (10th century), the issue of inadequate government-allocated land for peasants had become glaringly apparent. Compounded by years of warfare, the household registration system had become corrupt. As the system of state land allocation faltered, particularly during times of conflict, the government found itself unable to effectively control land distribution. In this context, the process of land privatization therefore gained momentum. Alongside this trend, a new system of nominally public land ownership emerged. This public ownership stemmed from government officials forcibly seizing and appropriating land from impoverished peasants amid turbulent wars, converting it into state-owned land, and subsequently leasing it back to peasants for private profit. This kind of state-controlled land was redistributed by the emperor to the ruling elites under the guise of '*Yongye tian*' (永业田 perpetual estate) and '*Guan tian*' (官田 official land) for the personal use and private interests of those elites²⁶. Take *Yongye tian* for instance: this is land allocated by the ruling elites to peasant households under the 'equal-field system' (均田制 *jun tian zhi*), with property rights existing in a gray area between state ownership and private ownership. Han Guopan argues that although *Yongye tian* could be inherited, the

²⁵ G.Zhao (2003).

²⁶ Cheng (1957), 489.

state retained the authority to reclaim or adjust allocations, making it essentially state-owned but privately used.²⁷

Niida Noboru contends that *Yongye tian*'s transfer and inheritance rights approached private ownership, yet restrictions such as a ban on pawning or mortgaging land rendered it incomplete private property.²⁸ Farmers had cultivation and income rights, with hereditary succession.²⁹ However, land could be reclaimed if a household died out or abandoned cultivation.³⁰ Actual possession required registration in household records. One such register, the *Dunhuang Contracts Register* S.514 shows that land transfers needed official approval (申牒立案 *shen die li an*), or they were deemed illegal.³¹ By the Late Tang dynasty (760–907 CE), *Dunhuang Contracts register* P.3331 (851 CE) records unconditional sales, reflecting post-rebellion decentralization,³² and restrictions on *Yongye tian* sales weakened. This could be regarded as a shift toward land privatization.³³

However, the separation between public ownership and private usufruct rights remains a dominant feature. The late Tang and early Song dynasties (9th–10th centuries) witnessed the institutionalization of *dian* (典, redeemable sales), a practice allowing landowners to sell usage rights while retaining future redemption options. The use of *dian* (典), a conditional land transaction that allowed temporary transfer of usage rights while permitting redemption—a hybrid between tenancy and outright sale—became widespread during the Northern Song dynasty (960–1127), where it was formalized in land contracts and frequently adjudicated in legal disputes. The practice remained prevalent through the Ming dynasty (1368–1644), as seen in its codification within the *Great Ming Code* (《大明律》), which explicitly regulated redemption periods and inheritance rights for *dian* transactions.³⁴

By the Song and Yuan periods (10th–14th centuries), this developed into a new form as perpetual tenancy (永佃权 *yong dian quan*), wherein tenants gained inheritable and transferable cultivation rights (surface rights, 田面权 *tian mian quan*)—though ultimate ownership (subsoil rights, 田底权 *tian di quan*) remained with landlords. From the mid-Ming period onward (ca. 16th century), China's land tenure system underwent significant

²⁷ Han (1957).

²⁸ Niida (1960), 124, in Chapter 'Tang Code-Household and Marriage Laws': "All types of land shall not be mortgaged (贴赁) or pledged (质)"(诸田不得贴赁及质).

²⁹ Ibid., 128, in Chapter 'Tang Six Statutes-Ministry of Revenue': "Yongye tian may all be inherited by descendants and are not subject to state confiscation or redistribution" (永业田皆传子孙, 不在收授之限).

³⁰ Ibid., 131.

³¹ Ikeda (1979), Stein's *Dunhuang Manuscript S.514: Tianbao-era Land Allotment Register*.

³² Zhang (1995), 285–87.

³³ Ibid.

³⁴ Dai (2011).

transformation with the widespread adoption of *yong dian quan* and the formalization of the 'one field, two owners' (一田二主 *yi tian er zhu*) model. These developments reflected the growing commercialization of agriculture, particularly in economically advanced regions like Jiangnan and Fujian. During the Ming (1368–1644) and Qing (1644–1912) dynasties, China's land market developed increasingly sophisticated transaction forms that occupied intermediate positions between simple leases and absolute sales. Three notable examples emerged: First, *ya zu* (押租, rental collateral) required tenants to pay a deposit to secure cultivation rights, creating a hybrid between tenancy and conditional sale. This practice became particularly widespread in the Jiangnan region during the mid-Qing period, as evidenced by surviving tenant contracts from the Suzhou prefecture.³⁵ Second, *huo mai* (活卖 live sale) allowed sellers to retain redemption rights for periods typically lasting 30 years, as codified in Article 95 of the *Qing Code*.³⁶ Third, *tai jie* (胎借) transactions, where land served as loan collateral while generating rental income, proliferated in commercialized regions like Fujian, as recorded in the *Zhangzhou Merchant Archives*.³⁷ The Ming and Qing dynasties (14th–19th centuries) saw further complexity:

- Field surface rights (田面权 *tian mian quan*) emerged as de facto ownership of cultivation rights, tradeable independently of subsoil rights.
- Rental collateral (押租 *ya zu*) required tenants to provide deposits for land access, often exceeding annual rents.
- Offsetting (抵 *di*) allowed land rights to serve as loan collateral, blurring lines between mortgages and sales.

By the late imperial period (18th–19th centuries), these practices had coalesced into a clearly stratified land rights transaction system. As Zelin demonstrates through contract analysis, the hierarchy progressed from temporary arrangements to permanent alienation: lease → tenancy → rent → *dian* (conditional sale) → mortgage → *huo mai* (live sale) → *jue mai* (absolute sale).³⁸ This fragmentation of land rights reflected commercialization pressures, yet state and customary law struggled to reconcile competing claims—a tension central to China's agrarian political economy. This gradation of rights reflected both local customary practices and formal legal recognition, particularly in the Qing dynasty's systematic compilation of property regulations.³⁹ The system's internal logic balanced economic flexibility with ownership stability, enabling land to

³⁵ Huang (1985), 112–15.

³⁶ Jones (1994).

³⁷ Chen (2001), 67–72.

³⁸ Zelin (2004), 89–93.

³⁹ *Da Qing Hui Dian* (大清会典), see Wu (2015).

function simultaneously as productive asset, credit instrument, and inheritance vehicle.⁴⁰

4. The Institutional Design of Land Markets: Incomplete Transfer of Ownership

With respect to the land trading market, Cao Shuji and Liu Shigu, through the excavation of archives and deed documents in Jiangxi, Zhejiang, Jiangsu, Shanghai, and Chongqing, argue that the ownership of land could be divided into the right to dispose, the right to income, and the right to use. Each of these three were incomplete land property rights. All of them could be traded through the corresponding market.⁴¹ Long Denggao's research points out that separate land rights in China existed independently and entered the market for trading at different levels and time periods, resulting in different forms of property rights, such as ownership, possession right, security interests, and use right, each with its own corresponding form of trading and trading system.⁴²

Landowners could allow farmers to choose suitable transaction forms based on market prices, risk preferences, and personal capital needs. For instance, *tai jie* (胎借) is borrowing secured by real estate documents (such as land deeds or property deeds) and repaid with land income. Repayment was effected through the revenues derived from cultivation or the proceeds of rent, rather than through fixed monetary installments. Under this arrangement, the borrower retained the right of land use, while granting the lender the right to collect the land's rents or agricultural surplus for a specified period.

Tai jie must be distinguished from lease tenancy. In a lease, the landholder temporarily transfers both the right of use and the right to rents to a tenant in exchange for a contractual payment, while ownership remains unaffected. By contrast, *tai jie* did not involve the transfer of use rights; instead, it was a credit mechanism in which the borrower continued to work the land (or control its cultivation) but pledged the rents or yields as security for the loan.

It also differs fundamentally from a Western-style mortgage. In a mortgage, the borrower repays the loan through scheduled monetary installments, while retaining both use rights and income from the property unless foreclosure occurs. In *tai jie*, however, the lender acquired direct entitlement to the land's productive yield and rental proceeds as the primary means of repayment. If the funds obtained through *tai jie* (胎借) were insufficient, lease tenancy (*zu dian* 租佃) could also be employed. In lease tenancy, the landlord

⁴⁰ Perdue (1987), 154–57.

⁴¹ Cao and Liu (2014), 16, 4–5.

⁴² Long (2018), 2.

transferred the right of land use to a tenant farmer, on the condition that the tenant pay rent regularly and in full.

Tai jie and *zu dian* must be carefully distinguished. *Tai jie* was a credit arrangement: the borrower retained the right of land use but pledged the revenues derived from cultivation or the proceeds of rent to the lender as repayment. By contrast, *zu dian* was a land-management practice: no loan was involved, and the landlord earned a steady flow of income through rent payments, while the tenant acquired temporary cultivation rights.

Under the perpetual tenancy arrangement, land rights bifurcated into distinct layers: landlords retained nominal 'subsoil rights' (田底权 *tian di quan*), while tenants held 'land surface rights' (田面权 *tian mian quan*) that included cultivation privileges and could be independently bought, sold, or inherited. Contemporary records from Suzhou prefecture suggest that by the early Qing dynasty, such arrangements covered nearly 40% of cultivated land in the region.⁴³ Parallel to this development, the rental collateral system (押租制 *ya zu zhi*) emerged as tenants paid substantial deposits to secure cultivation rights—a practice well-documented in Wanli-era (1573–1620) Huizhou contracts.⁴⁴

Together, these innovations created a complex but flexible land market that balanced security for cultivators with income streams for landowners, while accommodating the needs of an increasingly mobile labor force. The *Fujian tong zhi* (福建通志 *General Gazetteer of Fujian*) of the Wanli period particularly notes how these systems helped mediate conflicts between absentee landlords and local cultivators in the province's mountainous terrain.⁴⁵

Tenants who lease land from landlords in perpetual tenancy have the right to cultivate the land indefinitely, but they cannot sublease the land to others. Perpetual tenancy rights give tenants a stable expectation of long-term investment returns, making them willing to increase land input costs.

Landlords only collect land rent, and changes in landlords do not affect the status of tenants, meaning changes in landowners do not affect cultivation rights. This system not only reflects the relative independence of land use rights but also embodies the long-term thinking of land use rights.⁴⁶

At this stage—within the framework of the separation of land ownership, securities interests, usufruct rights, and possession rights in traditional Chinese society—through the popularity of the *yong dian* (perpetual tenancy) system, ownership rights became

⁴³ Li (1986), 232.

⁴⁴ Xuewen Chen (2008), 145.

⁴⁵ Elvin (1973).

⁴⁶ Hao Chen (2008), 22–23.

shared among varied forms of other property rights. The fundamental bifurcation of land rights in Ming–Qing China emerged from multiple socioeconomic factors, with land reclamation and improvement constituting primary drivers.

As documented in Jiangnan land contracts from the Jiajing reign (1522–1566) onward, landowners frequently granted *yong dian* to incentivize tenants to reclaim marginal lands or improve soil quality.⁴⁷ This practice created a mutually beneficial arrangement: landlords retained ultimate ownership while tenants who invested labor in land development gained secure cultivation rights. The 1583 *Wuxi County Gazetteer* (无锡县志) specifically notes how “barren hills transformed into fertile fields through tenant industry” under *yi tian er zhu* / ‘one field, two owners’ and *Yong dian* arrangements. This division of ownership rights reflected practical economic calculus—tenants bearing the costs and risks of land improvement required long-term security, while landowners sought to maximize returns from otherwise unproductive holdings. As agricultural intensification increased during the late Ming, these arrangements became particularly prevalent in frontier regions like Hunan and Sichuan, where reclamation efforts demanded significant labor investment.⁴⁸ The resulting system legally recognized and protected tenants’ ‘cultivation/labor-based occupancy’ (力耕永占 *li geng yong zhan*, permanent occupancy through cultivation labor)⁴⁹ and legitimized tenants’ claims to land they had reclaimed, creating a moral economy that balanced landlord rights with cultivator equity, as evidenced in numerous Qing dynasty legal judgments regarding disputed improvement claims. The tenants regarded themselves as owners, and society also recognized them as such, so that the ownership of a piece of land was divided into two layers.⁵⁰

According to *Jiang Yin Xian Zhi* [Jiangyin County Records],

the land of the tenant is as if it were his own property, and to build a garden, or to build a house, or to make a grave on it, was exclusive, and the owner was not allowed to ask about it. If the tenants are old, they will share it with their sons; if they are poor, they will sell it to others.⁵¹

The maturation of the *Yong dian* system and *Yi tian er zhu* led to the development of two separate land market systems, which had two separate property rights, each with its own owner, who was free and independent to dispose of, transfer, bequeath, and sell his or

⁴⁷ Wang (1995), 78.

⁴⁸ Perdue (1987), 112.

⁴⁹ See Bernhardt (1992), who quoted Year 1585 *Fu Jian Tong Zhi* (Fujian Provincial Gazetteer) and discusses permanent tenancy (永佃权 *Yong dian quan*) and dual ownership in South China. See also Fujian Normal University History Department (1997).

⁵⁰ Yang (1988), 14.

⁵¹ Gazetteer of Jiangyin County. Chapter 3: “Tianfu zhi” (Treatise on Land Taxation). In *A Selection of Ming Dynasty Gazetteer in the Tianyi Ge Collection 1961-1965*.

her property rights. This meant the right to make use of the field could be independently mortgaged, pledged, transferred, and traded in two systems.

Under the system of *Yong dian*, tenants had the option of ceding or mortgaging the right to use the land (surface) when they faced financial difficulties. The reservation specifically refers to the possibility of recovering the ownership and use of the land at some point in the future.⁵²

According to Long, *dian* refers to a type of land transaction in which the grantee is granted the right to possess and operate the land for a specified period of time, along with entitlement to all associated income and interest. This arrangement does not constitute a straightforward offset between rent and interest. Rather, it represents a form of encumbrance that lies between outright sale—which involves the transfer of ownership—and tenancy, which grants only the right to use the land. In essence, the grantor leverages a future interest in the land to obtain capital, while the grantee gains temporary possession and may choose among various income-generating strategies: cultivating the land personally (operating income), renting it out (investment income), or transferring the grant itself (realizing future income). The grantee's ability to lease the land, including leasing it back to the original grantor, illustrates a system of shared land rights among landowners, grantors, and tenant farmers—one that was structured through market-based transactions.⁵³

The *Yong dian* system and *yi tian er zhu* create the unique *dian* (典) right. It constitutes what might be termed a 'super-usufruct,' a hybrid property right that fundamentally operates as a usufructuary interest while incorporating additional dimensions that transcend conventional civil law categories. Its distinctive features manifest in three crucial aspects: (1) It incorporates a financing function absent in standard usufructs (e.g., easements), where the lump-sum *dian* payment serves as both consideration for use and de facto credit extension; (2) It grants the holder more extensive control over the encumbered property than typical security interests (e.g., mortgages), including full possession and autonomous management rights; (3) Its unique dual redemption mechanism, allowing either party to initiate termination through repayment or forced sale. It creates a characteristically Chinese balance between stability and liquidity in land transactions. This tripartite combination of usufructuary dominance, secured credit elements, and bilateral termination options renders the *dian* right an institutionally complex yet economically adaptive vehicle for shared property utilization and ownership,

⁵² Huang (1985).

⁵³ Long (2022).

standing at the intersection of use rights, security devices, and conditional sales in China's unique land tenure system.

5. The Moral Understanding of Land Ownership and its Institutional Influence

We observe that the intricate method of dividing and transacting land ownership rights reflects a fundamental aspect of traditional land rights in China: the deeply ingrained spiritual tradition of communal ownership over land. This tradition shaped the nature of property rights in land, characterized by multiple subjects sharing ownership. In other words, land ownership is not vested solely in one party or individual but rather encompasses multiple stakeholders.

Consequently, the land transaction system in China during the Song–Qing period endeavored to minimize the transfer of ownership whenever possible. This enduring characteristic has persisted despite significant changes in the land system during modern times. Indeed, while the land rights system has undergone drastic transformations, two fundamental mechanisms have remained unchanged: the prevalence of multiple subject ownership of land and the incomplete transfer of land rights.

In his book *Feudal Society in China*, Qu Tongzu outlines two basic tenets of the feudal land system in China: “land is indivisible” and “land is not allowed to be bought, sold or transferred.”⁵⁴ As Long Denggao also pointed out in his study, in the pre-modern period of China's land rights transactions, whether it was a *dian*, a live sale, or a lease, all could be redeemed (回贖). Although the objects of the right of redemption could be completely different, their function was to avoid a complete transfer of land ownership rights. The norms of land transactions in ancient China also prevented or delayed the final transfer of land ownership as much as possible. Long's research shows that this system of non-transfer of land rights has formed an institutional adhesion that runs through the entire traditional Chinese land rights and land rights transaction system.⁵⁵

The evolution of China's land system in modern times has been consistently marked by a unified concept of land transactions: the incomplete transfer of land ownership and maintaining a degree of communal ownership or shared rights. This enduring principle can be traced from the Ming and Qing dynasties through the Republic of China era, the collectivist land system of the Maoist era, even to the neo-collectivist land system of the reform and opening-up period. This persistent adherence to the principle of incomplete

⁵⁴ Ibid.

⁵⁵ Long (2018), 60.

transfer of land ownership underscores its deep-rooted significance in shaping China's land system throughout history.⁵⁶

The multi-layered transaction system and separation of land ownership, possession, and use have helped numerous landless farmers meet their production and livelihood needs.⁵⁷ They emerged from the traditional economic structure of China, which is predominantly agrarian and characterized by small-scale farming economies. This framework / structuring of land rights prevents vulnerable peasants from easily falling into bankruptcy, as they can establish and develop their own farms and gain various business incomes beyond labor income.⁵⁸

This is also in line with the moral aspirations in the formation process of China's traditional economic system.⁵⁹ Practices such as mortgage loans and usury are subject to strong ethical constraints and moral criticism. Since ordinary peasants as loan borrowers are often at risk of falling into the trap of usury, they may be forced to sell their land due to an inability to repay debts. During the Ming and Qing dynasties, judicial rulings on land transactions, particularly absolute sales (*jue mai* 绝卖, which extinguished all redemption rights, distinguishing it from conditional sales like *dian*) resulting from debt default, frequently incorporated Confucian moral reasoning alongside formal legal principles. Archival evidence from Emperor Qianlong-era (1736–1795) court judgments reveal that magistrates systematically condemned creditors (*yin zhu* 银主) for exploitative lending practices, employing ethically charged terminology such as '*wei fu bu ren*' (为富不仁, wealthy without benevolence) to characterize their conduct. Case records from Fujian and Jiangnan jurisdictions demonstrate how magistrates frequently nullified or modified absolute sales contracts when lenders failed to exhibit proper forbearance, effectively institutionalizing mercy (*shu* 恕) as a corrective to contractual absolutism in depriving land from poor farmers. This jurisprudence constituted not merely discretionary leniency, but rather a systemic feature of late imperial property law that prioritized social stability over strict enforcement of creditor claims.⁶⁰

This judicial tendency reflected the operation of a moral economy in land transactions, wherein the state sought to mitigate the harsh consequences of market forces through ethical imperatives. The underlying rationale, deeply rooted in Confucian agrarian paternalism, positioned landowners as moral actors obligated to demonstrate *ren* (仁,

⁵⁶ Erickson (2011).

⁵⁷ Long (2018), 71.

⁵⁸ Long, et al., (2010).

⁵⁹ Zhao (2022).

⁶⁰ Long (2018), 63.

benevolence) toward vulnerable tenants and debtors. These rulings particularly targeted the practice of *Yi dang* (倚当, oppressive mortgages), which stood in explicit contrast to the idealized *Zheng dang* (正当, righteous mortgages) that balanced creditor rights with debtor protections. While both *Yi dang* and *Zheng dang* involved land-as-collateral for loans, they diverged sharply in legal recognition and sociocultural valuation. *Zheng dang* represented socially sanctioned transactions, characterized by state-compliant interest rates (typically ≤36% annually per Ming Code Article 149), clearly defined redemption periods (usually 10–30 years), and lender obligations to grant extensions during crop failures, that earned them the label ‘*Yi ju*’ (义举, virtuous acts) in magistrates’ rulings. In contrast, *Yi dang* arrangements were systematically condemned in Qing legal cases (e.g., Emperor Qianlong 42nd Year Hunan Case)⁶¹ for employing usurious compound interest (up to 100%), opaque foreclosure clauses, and collusion with local clerks to manipulate land registers—practices magistrates denounced as ‘*Wei fu bu ren*’ (wealthy without benevolence). This judicial dichotomy reflected the broader moral economy of Chinese land ownership / tenure law. As archival evidence from Fujian and Taiwan shows, magistrates frequently nullified *yi dang* contracts for “gross inequity” while upholding *zheng dang* as stabilizing mechanisms—a pattern that declined post-1850 as commercial credit markets overwhelmed Confucian equity norms.⁶²

Formal land deeds from the Ming and Qing dynasties show that many private land transaction contracts did not explicitly state whether they were live sales or absolute sales. In such cases, both legal and customary practices supported the presumption of *dian*, in which case redemption was possible, unless deeds and contracts explicitly stated absolute sale. When the contract did not specify a redemption deadline, the *Qing Code* initially defaulted to allowing unlimited redemption. The peasants of the *dian* fields could not only retain the right of redemption but often also demanded to retain the right of land use. They would continue to cultivate the land in the same place as tenants, known as ‘on-site tenancy leasing’ (就行佃赁 *jiu hang dian lin*). The original transferor of *dian* or their descendants could redeem the land’s possession and use rights even after several generations of ownership changes. Although the *Qing Code* of the year 1753 stipulated a thirty-year redemption period, unlimited redemption was still applied in practice and court judgments.

It is apparent that Chinese formal law recognized the ethical ideal of permanent communal land ownership from pre-commercial society, thus supporting unlimited

⁶¹ Qing legal judgments in *Xing An Hui lan*. See Bao and Zhu (1834 [2004]).

⁶² Huang (1996) on moral economy.

redemption of land possession and use rights. Logically, the law regarded the sale of land as a forced and reluctant act.⁶³ Considering that farmers typically sold land only as a last resort for survival, and in support of ethical principles favoring the survival of the weak, the law and judges tended to favor the weaker party.⁶⁴ Aiming at circumventing the transfer of land, the Chinese land ownership structure was deeply influenced by an ethics of land as the means of survival and a traditional morality inherent in those agrarian societies. It is thus crucial to consider the social dimension of property rights concepts.

As this analysis has demonstrated, the traditional Chinese land ownership system was fundamentally rooted in the familial structure that formed the core of societal organization. While land could be transacted within market systems, its conceptualization extended far beyond mere commodification, embodying instead profound cosmological and ethical dimensions tied to notions of *tian* (heaven) and *ming* (fate). This socio-cultural framework assigned land a sacred status as the physical locus of familial identity where ancestral graves, embedded within cultivated fields, rendered the soil inseparable from lineage continuity and geomantic fortune (*Feng shui*). Even in cases of *Jue mai* (绝卖, absolute sale) contracts, customary practice and judicial precedent consistently upheld the seller's enduring claim to grave sites, effectively creating a sacred exception to otherwise irrevocable property transfers.

This phenomenon underscores a critical tension between market logic and cultural imperatives: while land could be commercially alienated, its identity-laden attributes resisted full commodification. The persistence of *Huo mai* (live sales) and *dian* (conditional transfers) as socially legitimate transaction forms further illustrates how moral and emotional attachments to land superseded purely economic considerations. Land ownership thus functioned dually—as both a material base for subsistence and a symbolic foundation for personal and collective dignity.

The resulting system permitted layered, often overlapping rights over the same plot of land, reflecting divergent claims based on occupation, inheritance, or sacred stewardship. This multiplicity of rights—where contractual market dynamics coexisted with ideals of perpetual communal ownership—reveals the enduring influence of Confucian familial ethics on property relations. Far from being a mere economic asset, land remained a contested nexus of identity, belonging, memory, and moral obligation, whose transfer carried transformative symbolic weight for both individuals and communities.

⁶³ Lu (2008), 3.

⁶⁴ Huang (2007b), 61, 62.

6. Conclusion

The critiques of China's land ownership system, exemplified by Ellickson's characterization of complex land tenure,⁶⁵ often misinterpret its structural logic by applying rigidly economic frameworks. While Ellickson discusses *dian* as an "inferior security interest" compared to Roman-law mortgages and contends that mechanisms like *dian* and *huo mai* (live sales) imposed developmental burdens by "restricting individual ownership to future interests" and impeding agricultural improvement post-1600,⁶⁶ such arguments fundamentally misapprehend the cultural ontology of Chinese property relations.

The supposed "ambiguity" of Chinese land tenure in fact reflects an alternative rationality: one where layered rights (such as 'one field, two owners,' *Yi tian er zhu* 一田二主) emerged not as institutional failures, but as adaptive solutions balancing three core imperatives:

Familial Continuity: Ancestral land (祭田) and *Yi zhuang* embodied *Feng Shui* geomancy and lineage identity, making outright alienation culturally inconceivable, hence the persistence of redeemable transactions (such as *Dian* and *Huo mai*) to preserve intergenerational ties.

Community Equilibrium: By preventing creditor seizures of poor farmers' land and curbing land concentration, the system mitigated social destabilization.

Moral Economy: As Carsten Herrmann-Pillath's "relational property" paradigm⁶⁷ clarifies, Chinese tenure prioritized communal belonging over absolute ownership—a logic visible in how *dian* allowed redemption even after decades, recognizing the seller's enduring *tian mian quan* (surface / use rights 田面权).

China's land system achieved sustainability precisely through its complexity. The multi-actor and multi-owner claims it accommodated, from clan trusts to tenant cultivators, functioned as checks against both state predation and market excesses. Where British enclosure movements divorced land from social meaning, Chinese tenure embedded it within kinship and cosmological frameworks (*tian ren he yi* 天人合一, Harmony between Heaven and Man). This cultural-institutional analysis does not deny the system's contradictions but reframes them: what Western scholars term 'ambiguity' was in fact a sophisticated mechanism for reconciling market exchange with Confucian ethics. Future research should thus

⁶⁵ Ellickson (2011). He labels China's system as "complex land tenure,"(pp.1-2, 9-10, 31), directly in the paper title, arguing that redeemable sales (*dian / huoma*) created "fragmented ownership" that hindered agricultural productivity, pp.7-8. He also contends that "the lack of clear individual title in Qing China discouraged soil improvement,"(p.5), contrasting it with English enclosure movements.

⁶⁶ Ellickson (1995), 329.

⁶⁷ Herrmann-Pillath (2025).

abandon universalist property theories in favor of Herrmann-Pillath's "new language of property:"⁶⁸ one that treats Chinese land rights as relational configurations rather than imperfect approximations of Western liberal concepts of ownership. Only then can we properly assess their historical resilience and contemporary relevance.

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⁶⁸ Herrmann-Pillath (2023).

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STRUKTURWANDEL DES EIGENTUMS

This paper explores the unique structure of land ownership in premodern China (Song to Qing dynasties, 960–1911 CE), highlighting how it diverged from Western notions of absolute property. Rather than prioritizing complete alienability, Chinese land tenure featured multi-layered and overlapping rights that emphasized kinship, communal belonging, and moral constraints. Institutional features like the separation of subsoil and surface rights, redeemable sales (dian), and perpetual tenancy (yong dian) balanced market functionality with social stability.

These arrangements reflect a moral economy deeply influenced by Confucian values and an enduring communal logic. The study argues that what Western property law scholars once viewed as inefficient or ambiguous was in fact a culturally coherent land tenure system that embedded land within familial and ethical structures.